Supreme Court, U.S.
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No. 92-1926

In The

Supreme Court of the United States

October Term, 1993

MICHAEL L. MURRAY,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

Petition For Writ of Certiorari
To The Supreme Court Of Connecticut

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

This is a supplemental brief filed pursuant to the Court's Rule 15.7 to call the Court's attention to the applicability of a new case not available at the time of Petitioner's last filing.

Petitioner's last filing was the Petition for Writ of Certiorari to the Supreme Court of Connecticut, No. 92-1926, filed June 3, 1993. The new case is *United States v. Dixon,* 61 U.S.L.W. 4835 (June 28, 1993) (No. 91-1231).

Dixon addresses in ways favorable to the grant of Petitioner's petition two subsidiary questions included in the first question presented for review in the petition. The first question presented for review is:

> Whether the Fourteenth Amendment command that no state shall "deprive any person of life, liberty, or property, without due process of law" prohibits the State of Connecticut from acting pursuant to court rule and without legislative authority, to arrest, prosecute and inflict serious criminal penalties for violations of court orders where the alleged violations do not interfere with the administration of court proceedings and do not occur in the courtroom.

(Pet at i.) The two subsidiary questions included in the first question presented for review are: (1) whether contempts of the kind alleged by the State of Connecticut below are crimes in the ordinary sense, as claimed by petitioner (Pet. passim) and as inferentially denied by the Connecticut Supreme Court (Pet. at App. 3 n.5, App. 7 to App. 8 n.12), and (2) whether a majority of the Court thinks that a court has no inherent power to punish as criminal contempt the violation of an injunction, as

claimed by Petitioner (Pet. passim) and as denied by the Connecticut Supreme Court (Pet. at App. 11 n.17) ("Justice Scalia, alone among the current Justices, reads *Bloom* [*Bloom v. Illinois*, 391 U.S. 194 (1968)] to hold . . . that a court has no inherent power to punish as criminal contempt the violation of an injunction.").

Dixon decides yes on both subsidiary questions. Speaking for a Court that included all Justices except perhaps Justice Blackmun, Justice Scalia wrote with respect to the first subsidiary question: "It is well established that criminal contempt, at least the sort enforced through non summary proceedings, is 'a crime in the ordinary sense'." *Dixon* at 4837 (citing *Bloom*). Speaking for the same majority Justice Scalia wrote with respect to the second subsidiary question: "Federal courts had power to 'inforce the observance of order', but those 'implied powers' could not support common-law jurisdiction over criminal acts." *Id.* at 4836 [citing *Hudson and Goodwin*, 7 Cranch. 32, 34 (1812), and then citing *Bloom* for a discussion of federal courts' statutory contempt power].

Dixon clears away these important subsidiary questions, and permits a sharp focus to the first question presented for review – in the context of *Dixon* – whether the Due Process Clause of the Fourteenth Amendment prohibits a state from pursuing crime in the ordinary sense on the basis of implied powers that are denied to federal courts because they are said by the Court to not exist at common law. The Connecticut Supreme Court says that it is not subject to the Court's view of implied power (Pet. at App. 11 n.17) ("Justice Scalia's reading of *Bloom* would not control this case. That reading depended

on Justice Scalia's interpretation of the limits of the judicial power under the United States constitution. It does not control the separation of powers provision of the Connecticut constitution."). Petitioner argues that the Due Process Clause of the Fourteenth Amendment makes each state subject to the Court's view of implied powers (Pet. passim).

The question whether a state is subject to the Court's view of implied power to formulate serious crime is brought sharply into focus by *Dixon* and by the facts of this case.

Dated: New Canaan, Connecticut

August 31, 1993

Respectfully submitted,

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